



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

(petitioner)  
c/o Attorney Donald Bauhs  
5712 Sixth Ave  
Kenosha, WI 53140

DECISION

MDV-30/50450

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 10, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Kenosha County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on October 18, 2001, at Kenosha, Wisconsin.

The issue for determination is whether the county agency correctly denied petitioner's institutional MA and created a divestment penalty period of January 1, 2001 through November, 2001.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)  
c/o Attorney Donald Bauhs  
5712 Sixth Ave  
Kenosha, WI 53140

Representative:

Attorney Donald Bauhs  
5712 Sixth Ave  
Kenosha, WI 53140

Wisconsin Department of Workforce Development  
Bureau of Workforce Programs  
201 East Washington Avenue  
P.O. Box 7935  
Madison, WI 53707-7935  
Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Lauren Fox, ES Supervisor, and Roberta Bloner, ESS  
Kenosha County Human Service Dept  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxx) was a resident of Kenosha County who died on August 15, 2001. The petitioner entered a hospital on January 22, 2001 and was transferred to a nursing home (Hospitality Manor) on January 24, 2001. See Exhibit 5.
2. On June 28, 2001, petitioner's daughter and her son and POA applied for institutional MA on behalf of their mother. During the application interview, petitioner's children explained that many years ago (after their father's death), petitioner added her son's name to one of her bank accounts making it a joint account; and petitioner added her daughter's name to another of her bank accounts making it also a joint account. See Exhibit 5.
3. On January 22, 2001, petitioner's daughter closed the joint bank account with petitioner and withdrew \$52,314.77. On January 24, 2001, petitioner's son closed the joint bank account with petitioner and withdrew \$27,858.98. See Exhibit 5. The total amount withdrawn by petitioner's children on January 22<sup>nd</sup> and 24<sup>th</sup> was \$80,173.75.
4. The county agency sent a July 31, 2001 manual negative notice to the petitioner denying her MA institutional application due to divestment. See Exhibit 3, page 1. This same notice also explained how the county agency had calculated petitioner's divestment period to be eleven months (January, 2001 through November, 2001). See Exhibit 3, page 2.
5. The petitioner's children paid petitioner's funeral expenses and some of her nursing home bills in the total amount of \$32,110.87. See Exhibit 3, pages 1 and 2, and Exhibit 5.

### DISCUSSION

A divestment occurs when an institutionalized individual, his spouse, or another person acting on his behalf, transfers assets for less than fair market value, on or after the individual's "look-back date." Wis. Stat. § 49.453(2)(a). The "look-back date" is defined as 36 months before, or with respect to trusts, 60 months before, the first date the individual is both institutionalized and an MA applicant. Ibid., (1)(f). If such a transfer occurs, the individual is ineligible for MA for nursing home services for a number of months determined by totaling the value of all assets transferred during the look-back period and dividing that amount by the average monthly cost to a private patient of nursing facility services at the time of the MA application. Ibid., (3)(b). Currently, this monthly nursing facility cost is \$4,075. The ineligibility period begins with the month of the divesting transfer of assets. Ibid., (3)(a).

In this case, the month of divestment was January, 2001 when the petitioner's children withdrew (transferred) funds from their joint accounts with their mother. See Finding of Fact #3. The county agency correctly calculated the petitioner's divestment as follows: \$80,173.75 total withdrawal - \$32,110.87 funeral and bills = \$48,062.97 in divestment. See Exhibits 3 & 5. \$48,062.97 divided by the \$4,075 average monthly Nursing home cost equals a divestment period of 11 months from the January, 2001 divestment acts.

A parallel divestment definition is found at Wis. Admin. Code § HFS 103.065(4), and states in the parts relevant here, as follows:

(4) DIVESTMENT. (a) *Divestment resulting in ineligibility.* An institutionalized individual or someone acting on behalf of that individual who disposes of resources at less than fair market value within 30 months . . . immediately before or at any time after the date the individual applies for MA while institutionalized, shall be determined to have divested. . .

(Emphasis added).

The MA Handbook provides the following statement regarding jointly held assets:

When an institutionalized person owns an asset in common with another person and when s/he or the other person or any person acting on their behalf **transfers** the asset during the lookback period or anytime thereafter, s/he may be penalized for divestment if the transfer:

1. Reduces or eliminates the institutionalized person's ownership or control of the asset, or
2. Limits the institutionalized person's right to sell or otherwise dispose of the asset.

MA Handbook, Appendix 14.7.0. The instant case certainly fits the criteria for divestment of jointly held bank accounts. In fact, section 14.7.0 gives an example of a divestment which is very similar to the facts of this case.

There is no dispute in the record that the two bank accounts in question were jointly held bank accounts. During the hearing, Attorney Bauhs was unable to refute the county's case as stated in the above Findings of Fact. However, Mr. Bauhs attempted unconvincingly to argue that a "constructive" divestment had occurred during 1986 regarding the bank accounts in questions and therefore divestment had been satisfied. In support of that allegation, petitioner's daughter testified without any kind of corroboration that her mother "intended" the funds from the two bank accounts to be the funds of her two children. However, (daughter) admitted that she had no documentation whatsoever of such an understanding or agreement and that no funds were actually transferred. Further, (daughter) admitted that no other person was present to witness petitioner in the alleged telling that she wanted her two children to have the funds from the two bank accounts. (daughter)'s testimony appeared to be self-serving. Although petitioner's attorney never defined what he believed was a "constructive divestment", he nonetheless contended that such a "constructive divestment" had occurred.

During the hearing, Attorney Bauhs offered an article about joint bank accounts apparently to support his case. See Exhibit 6. This general article indicated that a joint bank account permits each owner to withdraw the funds regardless of who deposited the funds. This is true. However, the issue in this case was not whether it was legal for petitioner's children to withdraw funds from their joint bank accounts but whether such withdrawals were divestments. This article offers nothing to refute the county's case that a divestment took place during January, 2001.

The Wisconsin statute sec. 49.453 states in pertinent part in regard to divestment of assets:

**(6) Common ownership.** For purposes of sub. (2), if a covered individual holds an asset in common with another person in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, is **considered to be transferred by the covered individual when an action is taken, either by the covered individual or by any other person, that reduces or eliminates the covered individual's ownership or control of the asset.**

(emphasis added).

Sec. 49.453(6), Wis. Stats.

In the instant case, the action taken to transfer the joint asset was the January, 2001 withdrawals of funds from the joint accounts by petitioner's two children. No action of transfer was taken during the alleged "constructive" divestment during 1986. The petitioner's case simply lack merit or credibility.

Based on the evidence presented at the hearing, I conclude that the county agency met its burden of proof to clearly establish that petitioner had divested funds from the two joint bank accounts. The petitioner's representative failed to establish any divestment during 1986 and was also unable to refute the county agency's case that divestments did occur during January, 2001. Accordingly, the county agency correctly denied the petitioner's MA Institutional MA application due to divestment and correctly calculated an 11-month divestment ineligibility period from January, 2001 through November, 2001.

As dicta, Attorney Bauhs' behavior both before the hearing began and during the hearing was belligerent and rude towards both the county agency and this ALJ. It is expected that Mr. Bauhs behave in a more reasonable and civil manner in any future hearings before the Division of Hearings and Appeals.

### **CONCLUSIONS OF LAW**

The county agency correctly denied the petitioner's MA-Institutional application due to divestment, and correctly determined that her period of ineligibility due to divestment continues from January, 2001 through November, 2001.

**NOW, THEREFORE, it is ORDERED**

The petition for review herein be and the same is hereby dismissed.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 13th day of  
November, 2001

---

/sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals  
1121/GMW

cc: Margaret Desarmo - Kenosha Co. - e-mail  
Susan Wood  
ES Supervisor Lauren Fox, Kenosha DHS  
Roberta Bloner, ESS  
Karen Mayer, Administrative Assistant